

PHILIP W. GASBARRO, ESQ.

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Name: Philip W. Gasbarro, Esq.
Organization: Law Offices of Philip W. Gasbarro, Esq.
Bill Number: 2026 H 8120
Entitled: “RELATING TO TAXATION -- ESTATE AND TRANSFER TAXES -- ENFORCEMENT AND COLLECTION”

Roberta DiMezza, Clerk
House Judiciary Committee
(401) 222-2258
housejudiciary@rilegislature.gov

Re: Letter of Support for H 8120

Dear Members of the House Judiciary Committee,

I am writing to express my support in favor of Bill H 8120. This Bill will correct a longstanding issue with estate tax filings, which require estates that are not taxable to still file a full 22-page Form RI-706 Estate Tax Return.

Under R.I. Gen. Laws § 44-23-9, estate taxes are an automatic lien on the property of a decedent for 10 years following the decedent’s date of death. And under R.I. Gen. Laws § 44-22-1.1(a), this lien attaches to “the transfer of the net estate of every resident or nonresident decedent as a tax upon the right to transfer.” This means that even if, for example, the property passes to a surviving spouse who hold title to the family house as Tenants by the Entirety and has no need to probate the estate because of survivorship rights, there is still technically an “automatic lien” on the house that requires the 22-page Form RI-706 to be filed.

My professional occupation is as an attorney-at-law, where I own and operate my own law firm in North Smithfield, Rhode Island. I serve clients throughout all of Rhode Island and Massachusetts by primarily handling real estate closings, such as such as the purchase or sale of a home. It is my experience with dozens of closings each year, that the unintended effect of the estate tax law is that widows or children of the decedent, when it is time to sell the home, are surprised to learn that there is a “lien” on the property and that these tax filings need to be completed for closing!

Part of their surprise stems from the fact that the analysis of whether an estate tax return is needed is completely separate and distinct from the analysis of whether title to the real estate will pass without probate. In the vast majority of these cases, the real estate that is being sold has passed to the heirs-at-law by automatic operation of law, such as to a widow by way of joint tenancy, or to the children by a life estate deed or trust, but there is still an estate tax filing that is technically needed to clear the automatic statutory lien.

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I believe these tax return filings done in connection with real estate closings for nontaxable estates to be an unintended effect of the estate tax laws, because in many of the cases, the family home is the only asset that the decedent owned, and I often see that the value of such estates is less than one-quarter of the threshold amount for the estate tax, so it is obvious that there is no tax due. The estates of these good folks are not remotely close to the threshold needed for the estate tax, so why are we requiring them to file complicated estate tax returns? This proposed bill under consideration would fix this.

Without this legislation, the current requirement is that all decedents need to file these returns in order to clear the title so they can sell the real estate. For the types of nontaxable estates we are discussing, this is occurring as a closing requirement in the middle of the sale of the real estate. The effect is that the widows and children are spending hundreds of dollars to prepare filings when they are not the intended target of the estate tax laws, are having their closings delayed, and even when closings do occur, there is still a holdback on their proceeds until the State can finish processing the paperwork and approve the lien discharges for recording.

The Bill proposed here tonight would allow the widows and children of decedents in such cases to clear the automatic lien from the title by an affidavit prepared as part of the closing. This is the exact same process that has been used in Massachusetts since at least 2004 (the Real Estate Bar Association of Massachusetts has a simple 2-page affidavit known as Practice Form 32 which is the affidavit used in compliance with Mass. Gen. Law C. 65C, § 14(a)) to achieve the same thing as would be done pursuant to the Bill under consideration here tonight.

It is my opinion that there would be no negative effect from this legislation, because there are two primary enforcement mechanisms that will remain in effect, and because this approach would mirror the same approach successfully used in other Rhode Island tax legislation.

First, the only effect of this legislation is that the automatic lien can be cleared from the title of nontaxable real estate, so that the title is clear and the property can be sold to a purchaser. This means that in the event the estate was actually taxable and the affidavit was prepared improperly, the lien on the cash received from the sale or on other assets of the estate would still remain in force and effect, and the Division of Taxation would still be able to enforce the estate tax law to the same extent that it currently can.

Secondly, there are many other situations where a discharge of the estate tax lien (even for a nontaxable estate) will still be requested from the State, such as part of the administration of a probate estate. Just as many probate judges require that the paid funeral bill is filed with the court as evidence that the debt has been satisfied, many judges require a certificate to be obtained from the Division of Taxation before a probate estate can be closed.

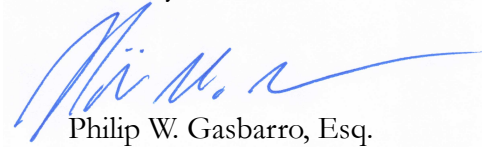
Finally, it should also be noted that a similar procedure has been used for the handling of nonresident real estate taxes at closing for more than 30 years pursuant to R.I. Gen. Laws §44-30-71.3. In cases where the seller is a resident and no nonresident withholding tax is due, an affidavit is used at closing in order to clear the automatic lien that would otherwise attach per the statute. Therefore, this legislation would bring the estate tax statutes into alignment with the procedures used in other sections, alleviate a significant burden on Rhode Islanders who were

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never the intended target of estate tax legislation, and all while not creating any material risks of reduced tax enforcement.

Accordingly, I would respectfully urge that this Committee recommend Bill H 8120 for passage. Thank you.

Sincerely,

A handwritten signature in blue ink, appearing to read "Philip W. Gasbarro", with a long horizontal flourish extending to the right.

Philip W. Gasbarro, Esq.